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BLACK & VEATCH CORPORATION

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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

SAIGUT S.A. de C.V., a Mexican corporation; and SAIPEM S.A., a French corporation, Plaintiffs, v. SEMPRA ENERGY, a California corporation; SEMPRA LNG, a Delaware corporation; ENERGIA COSTA AZUL, S. de R.L. de C.V., a Mexican corporation; BVT LNG COSTA AZUL, S. de R.L. de C.V., a Mexican corporation; COSTA AZUL BMVT, S.A. de C.V., a Mexican corporation; BLACK & VEATCH CORPORATION , a Delaware corporation; TECHINT S.A. de C.V., a Mexican corporation; THE KLEINFELDER GROUP, INC., a California corporation; ARUP NORTH AMERICA LIMITED, a United Kingdom corporation; ARUP TEXAS, INC., a Texas corporation; WHESSOE OIL & GAS LIMITED, a United Kingdom corporation; Q & S ENGINEERING, INC., a California corporation; and DOES 1 through 20, inclusive Defendants.	No. 08 CV 0478 JM BLM **DECLARATION OF RICHARD E. ELDER IN SUPPORT OF EX PARTE APPLICATION TO EXTEND THE TIME FOR DEFENDANT BLACK & VEATCH CORPORATION TO RESPOND TO THE COMPLAINT BASED ON THE COURT'S APRIL 9, 2008 ORDER TO SHOW CAUSE**

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DECLARATION OF RICHARD E. ELDER

I, Richard E. Elder, declare:

1. I am an attorney licensed to practice in the State of California. I am a Senior Attorney with Wulfsberg Reese Colvig & Firstman Professional Corporation, counsel of record for defendant Black & Veatch Corporation. I have personal knowledge of the facts set forth in this Declaration and could and would competently testify thereto under oath if called as a witness.
2. A true and correct copy of the Court's April 9 Order to Show Cause Why Complaint Should Not Be Dismissed for Lack of Subject Matter Jurisdiction is attached to this Declaration as Exhibit A.
3. A true and correct copy of Ted Parker's April 1, 2008 letter to James Wulfsberg is attached as Exhibit B.
4. I have conferred with counsel for the other three defendants who have appeared in this matter, Sempra Energy, Sempra LNG and Kleinfelder Group. All three parties agree with Black & Veatch that an extension is advisable.
5. I also met and conferred with plaintiffs' counsel regarding the possibility of a stipulated extension over the telephone on April 10 and in writing on April 10 and April 11. A true and correct copy of my April 10 e-mail to plaintiffs' counsel, my April 11 follow-up and plaintiffs' counsel's response is attached as Exhibit C. Plaintiffs' counsel did not express any definite opposition to an extension but stated that he was "not prepared to take a position" on the issue. Plaintiffs' counsel also stated that there is "not yet a great urgency" to Black & Veatch's request for an extension.
6. In an April 15, 2008 e-mail, I informed plaintiffs' counsel of Black & Veatch's intention to file the instant application and attached a copy of Black & Veatch's application. A true and correct copy of that e-mail is attached as Exhibit D.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on April 15, 2008, at Oakland, California.

DATED: April 15, 2008

WULFSBERG REESE COLVIG & FIRSTMAN
PROFESSIONAL CORPORATION

By /s/ Richard E. Elder
RICHARD E. ELDER
Attorneys For Defendant
BLACK & VEATCH CORPORATION

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Exhibit A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

SAIGUT S.A. de CV; SAIPEM S.A., Plaintiffs, vs. SEMPRA ENERGY, et al., Defendant.	CASE NO. 08cv0478 JM(BLM) ORDER TO SHOW CAUSE WHY COMPLAINT SHOULD NOT BE DISMISSED FOR LACK OF SUBJECT MATTER JURISDICTION

On its own motion, the court issues this order to Plaintiffs to show cause why the action should not be dismissed for lack of subject matter jurisdiction. Federal courts are courts of limited jurisdiction. "Without jurisdiction the court cannot proceed at all in any cause. Jurisdiction is power to declare the law, and when it ceases to exist, the only function remaining to the court is that of announcing the fact and dismissing the cause." Steel Co. v. Citizens for a Better Environment, 523 U.S. 83, 94 (1998) (quoting Ex parte McCardle, 74 U.S. (7 Wall.) 506, 514, 19 L.Ed. 264 (1868)). Accordingly, federal courts are under a continuing duty to confirm their jurisdictional power and are even "obliged to inquire sua sponte whenever a doubt arises as to [its] existence. . . ." Mt. Healthy City Sch. Dist. Bd. of Educ. v. Doyle, 429 U.S. 274, 278 (1977) (citations omitted).

Plaintiffs commenced this action alleging diversity jurisdiction pursuant to 28 U.S.C. §1332(a)(2) (diversity jurisdiction exists between "citizens of a State and

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citizens or subjects of a foreign state). The court is concerned that it lacks subject matter jurisdiction because, as alleged, this is an action between citizens of a foreign state and citizens of other foreign states and United States citizens. See Craig v. Atlantic Richfield Co., 19 F.3d 472, 476 (9th Cir. 1994) (court lacks diversity jurisdiction between foreign plaintiff and foreign and domestic defendants).

The court requests that Plaintiffs, as the parties who have the burden to establish diversity jurisdiction, see McCauley v. Ford Motor Co., 264 F.3d 952, 957 (9th Cir. 2001), submit responsive briefing to this Order to Show Cause. Plaintiffs shall file and serve the supplemental briefing by April 23, 2008. Defendants may file and serve a response by May 2, 2008. At that time, unless otherwise contacted by chamber's staff, the matter will be taken under submission pursuant to Local Rule 7.1(d)(1).

IT IS SO ORDERED.

DATED: April 9, 2008

Hon. Jeffrey T. Miller
United States District Judge

cc: All parties
Magistrate Judge Major

Exhibit B

K&L | GATES

Kirkpatrick & Lockhart Preston Gates Ellis LLP
55 Second Street
Suite 1700
San Francisco, CA 94105-3493

T 415.882.8200 www.klgates.com

April 1, 2008

Ted Parker

H. James Wulfsberg
Wulfsberg Reese Colvig & Firstman
300 Lakeside Dr.
Oakland, CA 94612

Re: *SaiGut S.A. de C.V., et al. v. Sempra Energy, et al.*

Dear Mr. Wulfsberg:

Your March 28 letter arrived by U.S. mail (your email of that date attached none). You assert that the Complaint lacks diversity of citizenship since foreign corporations are both plaintiffs and defendants. You ask how plaintiffs intend to establish federal jurisdiction.

An exception to the alienage rule you cite is that, when an alien corporation is sued as the *alter ego* of a domestic corporation, its citizenship, for diversity purposes, is determined through the combined business of the entities. See*, e.g., Danjaq, S.A. v. Pathe Communications Corp (*9th Cir. 1992) 979 F.2d 772, 775. In *Danjaq,* the Court of Appeals stated that the "exception to this rule [separate domicile of subsidiary corporation] is where the subsidiary is the alter ego of the parent corporation. Under these circumstances, courts view the formal separateness between the two corporations as merely a legal fiction."

As you say, the Complaint indeed names alien corporations as defendants. But it also alleges their *alter ego* relationships with domestic corporate defendants, such as the relationship of BVT with Black & Veatch, that of ECA with Sempra, etc.

I hope this answers your question. Please feel free to make any other comment.

Very truly yours,

KIRKPATRICK & LOCKHART PRESTON GATES ELLIS LLP

Ted Parker

Robert Ted Parker

Exhibit C

Richard E. Elder

From: Parker, Ted [ted.parker@klgates.com]
Sent: Monday, April 14, 2008 6:04 PM
To: Richard E. Elder
Cc: H. James Wulfsberg; Eric J. Firstman; Mark Stump; kmcdonnell@sempra.com
Subject: RE: SaiGut S.A. de C.V., et al v. Sempra Energy, et al. - motion for extension

Mr. Elder:

I regret that I am not prepared to take a position according your requested schedule, but I am mindful of your desire for an answer and I will endeavor to give that to you as soon as I am able. I note that, as of today, there are more than 3 weeks until you need file any papers other than the OSC papers, and so I am glad there is not yet a great urgency.
Regards,

Ted Parker

Partner
K&L Gates
55 Second Street, Suite 1700
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(415) 882-8032 (direct)
(415) 882-8220 (fax)

ted.parker@klgates.com ***www.klgates.com***

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From: Richard E. Elder [mailto:RElder@Wulfslaw.com]
Sent: Friday, April 11, 2008 5:56 PM
To: Parker, Ted
Cc: H. James Wulfsberg; Eric J. Firstman; Mark Stump; kmcdonnell@sempra.com
Subject: RE: SaiGut S.A. de C.V., et al v. Sempra Energy, et al. - motion for extension

Ted:

Would you please respond with your client's position regarding the extension discussed below no later than close of business on Monday?

Best Regards,

Rich

Richard E. Elder, Esq.
relder@wulfslaw.com

From: Richard E. Elder
Sent: Thursday, April 10, 2008 4:55 PM
To: 'ted.parker@klgates.com'
Cc: H. James Wulfsberg; Eric J. Firstman; Mark Stump; 'kmcdonnell@sempra.com'
Subject: SaiGut S.A. de C.V., et al v. Sempra Energy, et al. - motion for extension

Ted:

Per your request, I write to follow up on our telephone conversation this morning in which I proposed a joint motion requesting that all defendants' time to respond to the Complaint be extended 21 calendar days. This will permit time for the Court to consider and rule on the pending jurisdictional Order to Show Cause ("OSC") before the defendants must submit responsive pleadings to Plaintiffs' complaint, which for Black & Veatch will be comprised of motion practice challenging certain non-jurisdictional aspects of the Complaint. Such motion practice would be rendered moot if the Court finds that it lacks subject matter jurisdiction over the case. We agree it is conceivable that the time schedule set by the OSC could reflect a considered judgment by the Cout to have the jurisdictional issue fully briefed by May 2, with other responsive pleadings, including motions, continuing to be due on May 8. But the OSC itself is silent on that point. Plainly, the purpose of the Court's OSC is to allow the Court to determine its own jurisdiction over the case, before it does *anything* else. With that purpose in mind, it seems likely that the Court would not require the parties to take action on non-jurisdictional issues while a decision on the jurisdictional question is pending.

As I explained in our conversation, the current schedule makes Black & Veatch's and Sempra's response to the Complaint due on May 8, six days after defendants' response to plaintiffs' OSC briefing is due. To meet a May 8 filing deadline, Black & Veatch would have to begin work on motion papers well before May 2. In fact, there is a good chance that we will not have a ruling on the subject matter jurisdiction issue before May 26 when plaintiffs' response to any Rule 12 motion would be due. The proposed extension could therefore avoid the needless preparation of four briefs (motions by Black & Veatch and Sempra and oppositions to each by plaintiffs) which could easily save the parties substantial attorney fees.

Contrary your suggestion during our call, we greatly doubt that the Court would perceive our proposed request for a scheduling order as second-guessing the scheduling aspect of the Court's OSC. We feel certain that it will at least view the motion for a scheduling order as a reasonable proposal, even if the Court denies it or grants it in modified form. I would be very surprised if Judge Miller would hesitate to either deny our motion or grant a shorter (or longer) extension than the one we request if he believes that doing so would serve the ends of justice or judicial economy.

I propose that we bring the issues discussed above to the Court's attention in a joint motion, propose a potential solution in the form of a three-week extension and commit the issue to the Court's sound discretion.

Please let us know your clients' position on this issue as soon as possible.

Best Regards,

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Richard E. Elder, Esq.
relder@wulfslaw.com

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delete this communication from all records and advise the sender via electronic mail

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Exhibit D

Richard E. Elder

From: Richard E. Elder
Sent: Tuesday, April 15, 2008 6:51 PM
To: 'Parker, Ted'
Cc: H. James Wulfsberg; Eric J. Firstman; Mark Stump; 'kmcdonnell@sempra.com'
Subject: RE: SaiGut S.A. de C.V., et al v. Sempra Energy, et al. - motion for extension
Attachments: Ex Parte Application.pdf

Ted:

As you know, it is important that this issue be resolved sooner rather than later for at least two reasons: First, to avoid unnecessary expenditure of our respective clients' time and money preparing Rule 12 briefing; and second to avoid any appearance that we have procrastinated in requesting an extension.

We therefore intend to move for additional time in which to respond. A copy of our papers are attached. I have spoken to the clerk who indicated that Judge Miller's preferred procedure is an ex parte application with no noticed hearing date. I am told that the Court will examine the motion and either rule on it or set an appropriate briefing and/or hearing schedule. In other words, it is my understanding that at this time there is no hearing or response date and, if the Court chooses to set either or both, my assumption is that you will learn about it at the same time we do.

If you have questions or would like to discuss, please feel free to reply or call.

Best Regards,

Richard E. Elder, Esq.
relder@wulfslaw.com

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Subject: RE: SaiGut S.A. de C.V., et al v. Sempra Energy, et al. - motion for extension

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✉ ***ted.parker@klgates.com*** ***www.klgates.com***

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